In the High Court of Judicature for Rajasthan

Jaipur Bench

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Cr. Misc. Petition No.546/1999

Pankaj Saxena & (5) Ors *Versus* State

Date of Order ::: 24/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. NA Naqvi, for petitioners
Mr. Arun Sharma, Public Prosecutor for State.

Instant Misc. Petition U/s 482 CrPC is directed against order dt.05/03/99 whereby Addl. Chief Judl. Magistrate No.3, Kota while rejecting application filed by petitioners U/s 177, CrPC, upheld its territorial jurisdiction for taking cognizance against them in Cr. Case No.386/98.

Manju Saxena-complainant filed criminal complaint before ACJM No.3, Kota on 07/05/98 for offences U/s 498-A & 406, IPC, against her husband and in-laws family members inter-alia alleging that her marriage was performed with Pankaj Saxena on 08/02/96 and after marriage, she started living in her matrimonial home at Aklera (Jhalawar) but owing to some indifferences with her in-laws family on the pretext of demand of dowry, with which they were not satisfied as they felt it insufficient fulfilling their

demands, which they were insisting upon more dowry, and torturing her and had not taken care despite she being pregnant – in course whereof, false allegations were imputed of foetus being of some other person, and she was turned out by the accused on 02/03/97 and she came to her parents' house at Kota; any how, on 05/01/98 she delivered a child and on the occasion of child birth also, sufficient articles were gifted to fulfill their demand of dowry but were not satisfied.

Complaint was sent for investigation to the police U/s 156(3) CrPC, on which FIR No.91/98 was registered at PS Mahila (Kota) on 19/05/98 and after completion of investigation, charge sheet was filed against petitioners.

However, petitioners moved application U/s 177 CrPC, alleging therein that according to the charge sheet, incident as alleged has taken place at Aklera (Jhalawar), therefore, the Court at Kota has no local jurisdiction to try the complaint. After hearing both the parties, learned trial Magistrate vide order dt.05/03/99 rejected their application holding that offence alleged in complaint is a continuing offence even while complainant residing at Kota, she has been

mentally tortured owing to their act; and thus, Court at Kota has a territorial jurisdiction to try the case. Hence this petition.

Counsel for petitioner submits that complaint, which according to them is totally false, yet as alleged therein, discloses that the incident of torture or demand of dowry took place at Aklera (Jhalawar) and no part of cause of action has accrued in district Kota and that apart it is not a continuing offence and merely because, her residing at parents' house at Kota will not give her a cause of action claiming territorial jurisdiction to file complaint at Kota and that being so, it is barred by Ss.177 & 178, CrPC. In support, Counsel placed reliance upon decision of Apex Court in **Y.Abraham Ajith Vs. Inspector of Police, Chennai (2004(8) SCC 100**) further considered in recent decision in **Manish Ratan Vs. State of MP (2007(1) SCC 262).**

No one has appeared on behalf of complainant despite service, Public Prosecutor supported the order and submits that learned trial Magistrate has given cogent reasons in holding that the case can be tried in Kota as cause of action has accrued to her while she is residing at her parents' house at Kota.

I have considered the submissions made and examined material on record. As per complaint, itself, Manju Saxena (complainant) was residing at her matrimonial house at Aklera (Jhalawar) and left out her on 02/03/97 complaint was lodged on 07/05/98 at Kota. Even from a bare perusal of complaint imputing allegations of cruelty and torture or demand of dowry which all were caused in course of her stay at her matrimonial home in Aklera and on 05/05/98, when she asked the accused to return back her Stridhan, they refused to do so. Thus, offence alleged in the complaint cannot be said to have been committed wholly or in part within local jurisdiction of learned Magistrate at Kota.

Scope of Ss.177 to 186, CrPC has been considered in **Y.Abraham Ajith Vs. Inspector of Police, Chennai (supra)** wherein Apex Court observed ad infra:

> "**11**. A similar plea relating to continuance of the offence was examined by this Court in **Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee (1997 (5) SCC 30)**. There the allegations related to commission of alleged offences punishable under Section 498A, 506 and 323 IPC. On the factual background, it was noted that

though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied."

"14. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise."

In view of what has been taken note of

by Apex Court, in view of S.177, which ordains that offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed, and in essence, it is the cause of action for initiation of proceedings against the accused and it is the place where the offence was committed. In the light whereof, each case has to be examined on factual position transpired from complaint and material on record. In the instant case, on account of alleged dowry demands by her in-laws family members, complainant left her matrimonial house at Aklera (Jhalawar) on 02/03/97 as disclosed in para 10 of complaint and at that time she raised demand to return back her Stridhan and the complaint was filed on 07/05/98 at Kota. Prima facie none of ingredients constituting offences U/s 498-A and 406, IPC can be said to have taken place within local jurisdiction of Magistrate at Kota. In fact all such allegations pertaining to act of cruelty and torture and demand of dowry took place while she was staying at her matrimonial house in Aklera. That being so, the logic of Section 178(c) of the Code relating to continuance of offences cannot be applied in the facts of instant case. This

Court is of the opinion that no part of cause of action arose in Kota and therefore, Magistrate at Kota had no territorial jurisdiction to deal with matter.

Consequently, misc. petition succeeds and is hereby allowed alongwith stay petition. Order dt.05/03/99 of ACJM No.3, Kota in Cr.Case No.386/98 is set aside and application of petitioner, therefore, stands allowed.

The complaint be returned to complainant who, if she so chooses, may file it in appropriate court at Aklera (Jhalawar) to be dealt with in accordance with law. A copy of the order be sent to the court below.

(**Ajay Rastogi), J.**

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